

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

* * * * *

UNITED STATES OF AMERICA	*	NO. M-11-CR-1747-01
	*	McAllen, Texas
VS.	*	5:05 p.m. - 5:18 p.m.
	*	5:25 p.m. - 5:34 p.m.
LORENZO GUZMAN	*	April 14, 2014

* * * * *

SENTENCING

BEFORE THE HONORABLE RICHARDO H. HINOJOSA
UNITED STATES DISTRICT JUDGE

* * * * *

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General Order 94-15, United States
District Court, Southern District of Texas**

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1 P R O C E E D I N G S

2 5:05 P.M. - APRIL 14, 2014

3 THE COURT: Criminal No. M-11-1747-01, *United*
4 *States of America vs. Lorenzo Guzman.*

5 MR. SCHAMMEL: Government is present and ready,
6 Your Honor.

7 MS. ALEMAN-BENDIKS: Your Honor, Mr. Guzman is
8 present and ready. He does not need an interpreter.

9 Your Honor, I didn't have an opportunity
10 to review with him the late filed objections by the
11 Government; and nonetheless, we are ready to proceed.

12 THE COURT: Okay, and the Court is going to go
13 ahead and grant the request to file the late filed
14 objections.

15 The manual that was being used in this
16 case is an old one?

17 MR. SCHAMMEL: Yes, sir.

18 THE COURT: And you feel that this objection
19 should apply even with the old one?

20 MR. SCHAMMEL: Yes, sir. In fact, all my
21 analysis and any quotations made --

22 THE COURT: The other thing is this was not
23 very clear to me, this report from the standpoint of
24 weren't you supposed to put one count and then the
25 other count so that we knew exactly what applied to

1 what count? I mean, this is grouping and you go with
2 certain rulings, but it wasn't clear to me. You have
3 two counts here, and in order to do that, what we
4 normally have done is, first, we do Count 1 and then we
5 do Count No. 4. And here I don't know where you end up
6 with which count.

7 PROBATION OFFICER CRUZ: Are we referring,
8 Your Honor, to --

9 THE COURT: Well, when you get to the base
10 offense level and the enhancements, your supervisor,
11 did she go through this?

12 PROBATION OFFICER CRUZ: She did, Your Honor.

13 THE COURT: Okay. Well, all right, just give
14 me Count No. 1 first and then Count No. 4 and then we
15 go through the grouping ways and then we determine what
16 the total amount is here. And so I couldn't figure out
17 how you broke this up.

18 There's two counts and when you have to
19 do both of them together, then we go to the grouping
20 rules, and then we end up where we're supposed to end
21 up here. But this does not seem to have done that.

22 PROBATION OFFICER CRUZ: Right, Your Honor, I
23 believe the Court is correct.

24 THE COURT: And the reason for that is what?
25 And you can ask your supervisor tomorrow that I asked

1 | why she didn't notice this.

2 | PROBATION OFFICER CRUZ: I will, Your Honor.

3 | THE COURT: I mean, the first thing that hits
4 | me last night is, well, which is Count 1 and which is
5 | Count 4 and then where do we end up here?

6 | PROBATION OFFICER CRUZ: Your Honor, I
7 | apologize. It was an oversight on my part.

8 | THE COURT: Okay. Well, because these are
9 | groupable, then the rule is what, that we go with the
10 | highest or do we have to add points or what do we do?

11 | PROBATION OFFICER CRUZ: That we go with the
12 | highest, Your Honor, and we have it in Paragraph No. 36.

13 | THE COURT: And then you all decided that you
14 | only were going to do one set of offense level
15 | computations?

16 | PROBATION OFFICER CRUZ: Correct, Your Honor.

17 | THE COURT: That hasn't been our practice.
18 | You should have clearly stated which was Count 1 and
19 | which was Count 4 and that based on the grouping rules,
20 | we are going with the highest one. That's what we
21 | normally do and I think the supervisor should have
22 | known that.

23 | PROBATION OFFICER CRUZ: I will advise, Your
24 | Honor.

25 | THE COURT: Yeah, she needs to be advised of

1 that. This is totally different than what we normally
2 do.

3 The other thing is, the Commission voted
4 last week to change something here with regards to
5 these cases. I don't think this matters in this case
6 because the cross-reference here is made on a gun that
7 he was personally -- that he has pled to, because a
8 cross-reference -- you tried to apply the
9 cross-reference here; right?

10 PROBATION OFFICER CRUZ: Correct.

11 THE COURT: Okay. And then we end up with a
12 Level 26, but it's the same level as you've determined
13 otherwise; right?

14 PROBATION OFFICER CRUZ: That is correct, Your
15 Honor.

16 THE COURT: Okay, and so it didn't matter that
17 we went to Level 26. However, if there is any one of
18 these four defendants that it does -- and this doesn't
19 go into effect until November 1st. The Commission has
20 now changed that the cross-reference has to be the
21 weapon that was in the count of conviction. In these
22 four cases it doesn't appear that where we have a
23 cross-reference that this makes any difference because
24 the cross-reference applies to each one of the weapons
25 as far as them going into Mexico.

1 Isn't that correct? Mr. Schammel?

2 MR. SCHAMMEL: That is correct, Your Honor.

3 There was discussion with the defendants with the
4 recruiter that all the weapons were --

5 THE COURT: Were going into Mexico. So
6 whatever substantive counts somebody pled to with
7 regards to the sham purchase, those weapons would be
8 eligible to the cross-reference because it is a weapon
9 that is going into Mexico.

10 MR. SCHAMMEL: Yes, sir.

11 THE COURT: Well, just be cognizant that after
12 November 1st, there is a possibility, if Congress
13 doesn't act otherwise, that the cross-reference is
14 going to be limited to the count of conviction with
15 regards to that particular weapon, rather than relevant
16 conduct type weapons.

17 MR. SCHAMMEL: Yes, Your Honor, I'll take a
18 look at that tonight.

19 THE COURT: Well, I'm saying that for
20 everybody, not just the prosecution.

21 MR. SCHAMMEL: I understand.

22 THE COURT: In this case it doesn't matter,
23 but was this clear to you?

24 MS. ALEMAN-BENDIKS: I understand what the
25 Court is saying and I understand the cross-reference of

1 26 is lower than the 28 figured out --

2 THE COURT: Right, because now we've gone to a
3 28 if we proceeded with the one that is being objected
4 to here.

5 MS. ALEMAN-BENDIKS: Even higher, Your Honor.

6 THE COURT: He's suggesting that this should
7 be --

8 MS. ALEMAN-BENDIKS: Start with the 20 is what
9 he's suggesting.

10 THE COURT: Okay. Mr. Guzman, have you had an
11 opportunity to review this Presentence Investigation
12 Report?

13 DEFENDANT GUZMAN: Yes.

14 THE COURT: Have you discussed it with your
15 lawyer, sir?

16 DEFENDANT GUZMAN: Yes, sir.

17 THE COURT: Is there anything that you wanted
18 to tell the Court about this report or anything else
19 before I make a decision as to what kind of sentences
20 to impose in your case, sentences to impose with
21 regards to the two charges against you?

22 DEFENDANT GUZMAN: I'd like to apologize to
23 you, Your Honor, I'd like to apologize to the Court,
24 and I'd like to apologize to my wife, daughter and
25 family for what I've done and all the harm and

1 embarrassment I've put them through. I take full
2 responsibility for what I've done. I know I've done
3 some stuff and it impacted them and I'm not proud of --
4 at the time of the offense I wasn't thinking about the
5 consequences I was doing for my offense.

6 THE COURT: Well, how could you not be
7 thinking about this? What did you think this was?

8 DEFENDANT GUZMAN: At the time I was high on
9 drugs and all I wanted to do was score some more drugs
10 for my drug addiction without taking into consideration
11 what I'd done was wrong. So I apologize for all the
12 harm I did from my actions.

13 I know I won't have this drug addiction
14 problem any more because all this time I've been here
15 has made me realized this kind of lifestyle is not for
16 me. I've also become a born again Christian since two
17 years ago. It hasn't been easy for me, but nothing's
18 going to make me turn back to that old lifestyle I had.

19 I'd like to thank you and I appreciate you
20 for letting me see my stepmom who raised me since the
21 age of four years old so I can say my blessings and
22 farewells before her burial. Thank you very much, Your
23 Honor. I am ready to comply with whatever the Court
24 wants me and needs me to do. I hope you can take into
25 consideration that I get some leniency for what I've

1 done, so I can get home as soon as possible, so I can
2 start supporting my wife, daughter and family and being
3 there for them.

4 I know I will succeed and be a model
5 citizen and do what I need to do to help out my
6 community. Thank you and God bless.

7 THE COURT: Ms. Aleman-Bendiks, you obviously
8 reviewed this report with him; is that right?

9 MS. ALEMAN-BENDIKS: Yes, Your Honor, I did.

10 THE COURT: And obviously, the Court is aware
11 of the Title 18, Section 3553(a) factors, which it needs
12 to consider in order to make a determination as to what
13 the appropriate sentence should be in this case. Two of
14 those factors, (a)(4) and (a)(5) require consideration
15 of the Guidelines as well as the policy statements
16 within the Guidelines. I will therefore go ahead and
17 determine and calculate the Guidelines, as well as
18 consider the policy statements, including grounds for
19 departure. And after having done that, then I will
20 consider all the applicable 3553(a) factors taken as a
21 whole in order to make a determination as to what the
22 appropriate sentence should be in this case. Not every
23 factor will apply in every single case, as clear from
24 Paragraphs 32, 94 and 95, and restitution is not an
25 issue here.

1 Which, if any, objections do you need a
2 ruling from the Court on and what would you like to say
3 on his behalf here?

4 MS. ALEMAN-BENDIKS: Your Honor, we are
5 objecting to the proposed Level 20 that the Government
6 has suggested in its objections apply in this case. We
7 do recognize that Mr. Guzman is a prohibited person,
8 Your Honor. But in this case, Your Honor, that Section
9 (4)(b) also requires that the Government prove that it
10 involved a semi-automatic firearm capable of accepting
11 a large capacity magazine. And, Your Honor, the burden
12 is on the Government on that issue.

13 THE COURT: What evidence do you have with
14 regards to that?

15 MR. SCHAMMEL: Your Honor, as evident in the
16 PSR, the PSR Officer interviewed the ATF Agent who
17 worked in the undercover capacity. The agent
18 specifically noted that the weapons requested and
19 purchased by the defendant contained magazines that
20 held in excess -- that held 30 rounds, which would then
21 put them within the -- within the purview of this Level
22 20.

23 MS. ALEMAN-BENDIKS: And, Your Honor, we
24 recognize that that's referenced in the PSI, Paragraph
25 28. At the same time, Your Honor, the firearm that

1 he's referring to, to justify the enhancement to Level
2 20 are the firearms that the agent himself provided.
3 And so in some sense, this is a Government sting
4 operation and the Government is in control of the type
5 of firearms that are being used.

6 THE COURT: Yeah, but that doesn't make it any
7 less, any more than the Government is always in control
8 in a drug trafficking situation with regards to the
9 drugs and --

10 MR. SCHAMMEL: These are the same types of
11 weapons that he had previously purchased through all of
12 the co-defendants, Your Honor.

13 MS. ALEMAN-BENDIKS: And, Your Honor, I mean,
14 I just don't know whether or not those other weapons --

15 THE COURT: I mean, they didn't introduce any
16 other weapon other than the type of weapon that had
17 been purchased for him with regards to his dealings
18 with the other defendants.

19 MS. ALEMAN-BENDIKS: And, Your Honor, we would
20 ask the Court for a ruling on that issue.

21 THE COURT: Well, the Court is going to go
22 ahead and deny it.

23 MS. ALEMAN-BENDIKS: Your Honor, what we'd
24 ask --

25 THE COURT: And what year manual are we using?

1 PROBATION OFFICER CRUZ: 2010, Your Honor.

2 THE COURT: Do you have that with you?

3 PROBATION OFFICER CRUZ: I do.

4 MS. ALEMAN-BENDIKS: Your Honor, we recognize
5 that the four-level increase was assessed with respect
6 to the number of firearms. What we are objecting to
7 is the four-level increase assessed with respect to
8 trafficking as well as the four level increase assessed
9 with respect to another felony offense. Those eight
10 levels --

11 THE COURT: As you know even from this
12 division, there's a Fifth Circuit court case that says
13 that's okay.

14 MS. ALEMAN-BENDIKS: Yes, Your Honor, what
15 we're asking this Court to consider in that case, those
16 levels are -- in this case, those levels are excessive
17 because it's essentially punishing him for the same
18 type of conduct. That would put him at a Level 32 if
19 the Court imposes all of those levels before acceptance
20 of responsibility credit.

21 MR. SCHAMMEL: An, Your Honor, as you noted,
22 Fifth Circuit precedent at this point is that both of
23 those applications are appropriate in these specific
24 types of circumstances and they are not considered
25 double counting for purposes of Guidelines calculation.

1 MS. ALEMAN-BENDIKS: Your Honor, in
2 Mr. Guzman's case the PSI also suggested a two level
3 increase for an aggravating role. We are objecting to
4 that. We do not believe that's appropriate in this
5 case. Mr. Guzman does recognize --

6 THE COURT: I don't think this is a case with
7 an aggravating role.

8 MS. ALEMAN-BENDIKS: Thank you, Your Honor.

9 THE COURT: Did the Government want to say
10 something about this?

11 MR. SCHAMMEL: No, Your Honor, we'll leave
12 that to the Court.

13 MS. ALEMAN-BENDIKS: Your Honor, without the
14 aggravating role, we're still at a very high level.
15 We'd ask the Court to consider criminal history over
16 representation. He does have four criminal history
17 points, which puts him in a Category 3. With the
18 additional acceptance of responsibility point, Your
19 Honor, we're still at Level 29, Category 3, looking at
20 108 to 135. That's certainly significantly more than
21 he thought he was receiving. He thought we were coming
22 here with approximately a 70 to 87 month Guideline
23 range.

24 He is ready to proceed, Your Honor. He'd
25 ask the Court to consider that he does want to return

1 to his life. He's a U.S. citizen. He recognizes the
2 mistakes that he's made. He wants to get back to his
3 family. He has been detained now approximately two and
4 a half years here locally at a facility. It's been a
5 very difficult situation for him, Your Honor. He does
6 need drug and alcohol treatment to help him to address
7 his needs once he gets out into the free world.

8 And the last thing, Your Honor, that he
9 has done everything possible to help himself, but
10 unfortunately, there have been no results.

11 THE COURT: And the reason for that is what?
12 The reason that -- if he's tried to help, the reason
13 that nothing has been done with regards to this is what?

14 MR. SCHAMMEL: Your Honor, the assistance he
15 gave was not that we were actually able to take down
16 anybody to the next level of the organization.

17 **[Pause]**

18 MS. ALEMAN-BENDIKS: Your Honor, may I approach
19 with the Government --

20 THE COURT: Sure.

21 MS. ALEMAN-BENDIKS: -- and Mr. Guzman? He
22 wanted to clarify one situation.

23 THE COURT: Sure.

24 **[5:19 p.m. - 5:26 p.m. Sealed bench conference**
25 **filed under separate cover]**

1 THE COURT: Ms. Aleman-Bendiks, did you have
2 anything else you wanted to say?

3 MS. ALEMAN-BENDIKS: No, we'd just ask the
4 Court to make any kind of consideration that the Court
5 feels is appropriate.

6 THE COURT: You what?

7 MS. ALEMAN-BENDIKS: We'd ask the Court to
8 consider anything that the Court feels appropriate
9 below the Guideline range.

10 THE COURT: Does the Government want to say
11 anything else?

12 MR. SCHAMMEL: Your Honor, the Government
13 would move for the additional point for acceptance of
14 responsibility.

15 THE COURT: The only problem with this, I
16 think when you start using the extra points for the
17 four exportation, at that point you then question what
18 this person's role is as opposed to the person that was
19 actually in charge of taking it over.

20 MS. ALEMAN-BENDIKS: And we'd ask the Court to
21 consider a mitigating role in Mr. Guzman's case,
22 considering that those levels are assessed as to him.

23 THE COURT: Well, because we are considering --

24 MS. ALEMAN-BENDIKS: Export -- the actual
25 export.

1 THE COURT: -- the exportation. And so
2 therefore, that adds four points to this and that's not
3 exactly what he was doing himself and it was clear that
4 he was working for somebody else. It's also clear that
5 somebody else, the whole case has been made against
6 them.

7 Does the Government want to say anything
8 else?

9 MR. SCHAMMEL: Your Honor, we're ready to
10 proceed.

11 THE COURT: The base offense level, based on
12 what the defendant has pled guilty to here in this
13 case, is 20. That's pursuant -- and this is a
14 different consideration here than what's on this report
15 here -- pursuant to 2K2.1(b)(4), is that right,
16 (b)(4)(B)?

17 PROBATION OFFICER CRUZ: That's correct, Your
18 Honor.

19 THE COURT: That was your objection; is that
20 right?

21 MR. SCHAMMEL: Yes, the objection was to
22 (b)(4)(B), Your Honor. The Government position was it
23 should have been (b) -- I'm sorry, it was (b)(6) and
24 the Government's position was should have been (b)(4).

25 THE COURT: It would be (4)(B).

1 MR. SCHAMMEL: Yes, sir.

2 THE COURT: It's 2K2.1(a)(4)(B)?

3 MR. SCHAMMEL: (a)(4), yes, sir, (B).

4 THE COURT: So this is a plus 20.

5 Pursuant to 2K2.1(b)(1)(B), the number of
6 weapons becomes a plus 4.

7 Pursuant to 2K1.(b)(5), he did engage in
8 trafficking as reflected in this report, so there is a
9 plus 4.

10 Pursuant to 2K2.1(b)(6), there is a plus 4
11 here -- plus 2 --

12 MR. SCHAMMEL: It would be plus 4, Your Honor.

13 THE COURT: -- plus 4 based on the fact that
14 it was in relationship to the commission of another
15 felony, which would be the drug -- crossing the border
16 illegally. So this becomes a Level 32.

17 Pursuant to Guideline Section 3B1.2(b),
18 the Court is going to find that he's a minor
19 participant. The adjusted offense level is 30. There
20 is a minus 2 for acceptance of responsibility, as well
21 as the extra minus 1.

22 You moved for the extra point; is that
23 right?

24 MR. SCHAMMEL: That is correct, Your Honor.

25 THE COURT: The Total Offense Level,

1 therefore, is 27; is that correct?

2 PROBATION OFFICER CRUZ: That is correct, Your
3 Honor.

4 THE COURT: And his Criminal History Category
5 is 3. The Court will adopt paragraphs 37 through 59
6 of this Presentence Investigation Report, with the
7 exception of paragraph 37, 46, as well as 48 and 50.

8 With a 27, Criminal History Category 3.
9 His range becomes 87 to 108 months.

10 The Court having considered that, as well
11 as all the applicable 3553(a) factors is going to find
12 that the appropriate sentence in this case is a
13 sentence of 87 months. There will be a \$100 special
14 assessment against him, as required by law. There
15 will be a two-year supervised release in his case to
16 commence upon release from confinement under the
17 conditions which have been adopted as standard in the
18 Southern District of Texas, to include all statutory
19 requirements.

20 This is with regards to Count 1 and Count
21 4, with regards to each one of these, to run concurrent
22 with each other. There is a \$100 special assessment
23 with regards to each one of them. The Court will not
24 impose a fine or the costs of incarceration on him, in
25 that the Court will find that he would be financially

1 unable even if the Court were to impose instalments to
2 make those payments.

3 The reasons that I've chosen this sentence
4 is because I've considered all the applicable 3553(a)
5 factors and find this is an appropriate sentence.

6 Mr. Guzman, I want you to understand that
7 if you would like to appeal this sentence, you have
8 within 14 days from the entry of judgment in this case
9 within which to do that, sir. The way that you do
10 that, sir, is by filing a Written Notice of Appeal with
11 the Clerk of the Court within that time period. If you
12 are unable to afford the cost of an appeal with that
13 time period, you will also have to file a motion to
14 proceed in forma pauperis in which you indicate to the
15 Court that you're unable to afford the cost of an
16 appeal. And if the Court were to find that you were
17 unable to afford the cost of an appeal, the Court would
18 appoint an attorney to represent you at no cost to you,
19 as well as bear the cost of the appeal.

20 I will indicate that this was two counts
21 that would be groupable. The Court did go with the
22 highest one, as required under the grouping section of
23 the Guidelines, and this was the appropriate way to
24 proceed.

25 I will recommend that he be placed in an

1 institution where he can receive any alcohol and/or
2 drug abuse treatment or counseling that may be helpful
3 in this case, as well as one as close as possible to
4 his family. I will also require that he have a special
5 condition of his supervised release term that he not
6 submit himself to any -- that he submit himself to any
7 drug abuse treatment or counseling -- and/or alcohol
8 abuse treatment or counseling that may be required of
9 him by the probation officer.

10 Mr. Guzman, you're going to get credit for
11 the amount of time that you've already spent in custody.
12 You can also get up to close to 15 percent of the time
13 off for good behavior.

14 I don't think I have to explain to you all
15 over again about how serious your prior convictions are.

16 DEFENDANT GUZMAN: Yeah, I know.

17 THE COURT: You have been in the middle of some
18 serious violations of law, which I can't understand
19 what's causing this.

20 DEFENDANT GUZMAN: It was just me being drunk
21 and not thinking about what I was doing, Your Honor. I
22 mean, a drug problem is what it was, I mean.

23 THE COURT: Well, hopefully, since 2011, of
24 November 2011, you haven't had anything to use as far
25 as drugs, and that hopefully by the time you get out,

1 this will never happen to you again and you put
2 yourself in a much better situation. You do have a
3 family that you need to be taking care of and they've
4 been loyal to you, but it's about time that you started
5 having some responsibility with regards to them.

6 DEFENDANT GUZMAN: Yes, sir.

7 THE COURT: And if it's drugs or alcohol -- I
8 don't think I need to explain to you also how serious
9 this crime is from the standpoint of the violence that
10 it's causing on both sides of the border.

11 DEFENDANT GUZMAN: Yes.

12 THE COURT: And we have two wonderful
13 countries that are neighbors and I think we can do
14 better than what we've been doing for each other,
15 whether it's the drug use on this side of the border
16 and the crossing of firearms from this side of the
17 border to Mexico and the drugs coming up from the
18 northern part of Mexico up here, we have issues in both
19 countries, and I think both countries deserve better
20 from the people involved in the middle of all of this.

21 I can no longer reduce the sentence unless
22 within one year from today the Government files a
23 motion to reduce your sentence based on cooperation and
24 assistance. There is this one-year time limit. You
25 can speak with Ms. Aleman-Bendiks about this. It can be

1 extended under very limited circumstances. I don't have
2 to grant that motion, but I look at those very seriously
3 and rule on them quickly.

4 You act like you want to say something,
5 Ms. Aleman-Bendiks?

6 MS. ALEMAN-BENDIKS: Yes, Your Honor, I just
7 want to clarify, on that second count it has a
8 statutory maximum of five years and so that's what the
9 Court has imposed?

10 THE COURT: 60 months for that one.

11 MS. ALEMAN-BENDIKS: Yes, Your Honor. Thank
12 you, Your Honor.

13 THE COURT: That felon in possession -- the
14 false statement, I mean, has a mandatory -- a maximum
15 of five years and that is the 60 months, and you're
16 right.

17 MS. ALEMAN-BENDIKS: Thank you, Your Honor. I
18 appreciate it.

19 THE COURT: But the Court is running them
20 concurrent to each other.

21 MS. ALEMAN-BENDIKS: Thank you, Your Honor.
22 We appreciate that. May I speak to him?

23 THE COURT: Yes, ma'am.

24 DEFENDANT GUZMAN: Thank you.

25 MR. SCHAMMEL: The Government would dismiss the

1 remaining counts as to this defendant.

2 THE COURT: That's granted.

3 ***[5:34 p.m - Proceedings adjourned]***

4

5 C E R T I F I C A T I O N

6

7 I certify that the foregoing is a correct
8 transcript of the electronic sound recording of the
9 proceedings in the above-entitled matter.

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12 /s/ Gwen Reed

13 5-25-14

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